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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

A.R., Plaintiff and Respondent, v. R.D., Defendant and Appellant.	A156268 (Contra Costa County Super. Ct. No. MSN182067)

Appellant R.D., in propria persona, appeals from an October 9, 2018 order which granted respondent A.R.'s request for a civil harassment restraining order protecting her and her minor daughter from R.D. for a period of one year.[1] (Code Civ. Proc.,[2] § 527.6.) Because A.R. has not filed a responsive brief and R.D. has waived oral argument, the appeal is submitted on the record and R.D.'s opening brief. (Cal. Rules of Court, rule 8.220(a)(2).) R.D. challenges the issuance of the restraining order on various grounds. Having examined the record and considered his arguments, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 24, 2018, A.R., in propria persona, filed a Judicial Council form CH-100 requesting the court to issue a civil harassment restraining order prohibiting R.D. from coming near or contacting her and her minor daughter. A.R.'s request was supported by her declaration and several pages of text messages between the parties.

[1] Pursuant to the California Rules of Court rule 8.90(b)(5)(11), governing "Privacy in Opinions," we refer to the parties by their initials.

[2] All further unspecified statutory references are to the Code of Civil Procedure.

In her declaration, A.R. stated that she met R.D. on August 30, 2018. Thereafter, he came to her home on three occasions to attend classes she taught on religion. After the second class, A.R. went out to lunch with R.D. to discuss a problem for which he sought her help. In the ensuing days, R.D. sent several text messages to A.R. indicating he wanted to build a personal relationship with her. A.R. responded by text message, stating "very clearly" that she was not interested in any type of relationship other than one of teacher and student. A.R. thought R.D. understood her message.

On September 17, 2018, A.R. informed R.D. that the class for that day was canceled, she was not available to get together with him, and he was not invited to her house. Nonetheless, from 11:50 a.m. to 6:30 p.m., R.D. repeatedly sent text messages stating that, because A.R. had invited him, he was still going to come to her house even though the class was canceled. A.R. repeatedly responded that the class was cancelled and he was not invited to her house. A.R. called her friend and asked the friend to contact R.D. and tell him he was not welcome at A.R.'s home. A.R.'s friend both telephoned and sent a text message from A.R.'s telephone to R.D., telling him he was not welcome at A.R.'s house. Just after 7:00 p.m., R.D. arrived at A.R.'s home and her friend answered the door. A.R.'s friend told R.D. to leave, he was not welcome there "now or ever," and she would call the police if he ever came to the house again. R.D. said he needed to see A.R. to make sure she was okay and said that the friend was holding A.R. hostage and controlling her. When A.R.'s friend again told R.D. she was going to call the police, he left. The next day, A.R. blocked R.D.'s number on her telephone.

Two days later, on September 19, 2018, A.R. received a text message from an unknown number asking for an invitation to A.R.'s next class and the location of the class. When A.R. asked for the person's name, the person replied, "Sol. It is a form of my middle name. . . ." A.R. called R.D. and told him she knew he had sent the text message and she was going to call the police. When the police officers arrived at A.R.'s home, the officers instructed A.R. to text R.D. and tell him to never contact her again in any way, which she did. The police also advised A.R. to make a crime report and file for

a restraining order if R.D. contacted her again. At the police officers' suggestion, A.R. blocked the unknown number that R.D. had used on September 19.

On September 21, 2018, R.D. was able to circumvent the block on his telephone number and sent A.R. a text message trying to convince A.R. that, because he had not done anything violent toward her, he was not stalking, harassing, or doing anything wrong. He also said he needed to talk to her or see her in person, "with no sign of stopping." In her declaration, A.R. explained that she was scared for herself and her daughter because she had recently escaped from a domestic violence situation with the father of her daughter; she did not want them to go through that again and saw "red flags and signs in this situation with [R.D.]

On September 24, 2018, the trial court issued a temporary restraining order in favor of A.R. and her daughter, directing R.D. not have any contact with A.R. and her daughter. The court scheduled a hearing for October 9, 2018.

R.D. filed a written response explaining the meaning of his text messages to A.R., why the last text message sent on September 21 was not harassment, and why he believed A.R.'s friend and the police were improperly interfering with his relationship with A.R.

On October 9, 2018, the trial court held a hearing at which both A.R. and R.D. appeared in propria persona. The court stated it had read A.R.'s pleadings and understood the essence of her complaint against R.D. A.R. informed the court that, after R.D. had been served with the temporary restraining order, he had sent an email to her at her workplace "with more harassment." A.R. further stated that she was requesting a restraining order on behalf of her daughter because her daughter lived with her. The court also heard from A.R.'s friend, who testified that she was present when R.D. came to A.R.'s house after he had been asked several times not to come to the house; "[a]nd he's persistent."

R.D. testified that he had not contacted A.R. after being served with the temporary restraining order. R.D. asked the court to decide for itself if he had harassed A.R. and told the court he would like "to have accord with" A.R. "if possible." He claimed there was some confusion over whether he had been invited to a specific event. He claimed

A.R. had invited him, but at some later time someone else told him that he was not invited and he went to A.R.'s home to find out if A.R. "was that person or not."

In reply, A.R. testified that on the day R.D. came to her house, he should not have been confused because she had made it very clear to him that he was not invited and he was not to come to the house in the text messages that had been exchanged between them. When asked if he had anything else to add, R.D. testified: "Yes. What she said was accurate. There might be some confusion over the point when she filed [the temporary restraining order], which was the 24th, and when she served, which was a different later date. I have not contacted her after she served me and talked to me."

The trial court then ruled: "Okay. I appreciate that. [¶] The Court will be granting the restraining order. It will be in force and effect for a period of one year. [¶] So, [R.D.,] you are not to harass, intimidate, molest, attack, strike, threaten, assault, hit, abuse, destroy personal property or disturb the peace of [A.R.] or her daughter. [¶]You are not to contact her directly or indirectly in any way including, but not limited to, in person, by telephone, in writing, by public or private e-mail, or by any type of electronic means. [¶] This is a complete stay-away order for 100 yards." In so ruling, the Court explained: "The Court is convinced that there is enough evidence here that arises to the point of clear and convincing that there's been a knowing and willful course of conduct that's been directed by [R.D.] against [A.R.]. That's not necessarily violence, but it is conduct nonetheless that annoys, alarms or she believes harasses her that serves in her mind no legitimate purpose. [¶] That meets the standard of harassment under the restraining order rules."

R.D. asked the court not to make a final decision before it reviewed his submitted documents in which he stated "there are religious matters involved here. . . ." The court stated it had reviewed R.D.'s documents, but it would not "adjudicate matters that relate to religious matters in nature." The court would only adjudicate the conduct between the parties as required by the law governing restraining orders.

At the conclusion of the hearing on October 9, 2018, the court issued a section 527.6 civil harassment restraining order in accordance with its decision. Thereafter, on

December 31, 2018, the parties again appeared in propria persona at which time the court heard argument on R.D.'s motion for reconsideration, which was opposed by A.R. Having read the entire file and considered the documents filed by the parties, the trial court denied the motion for reconsideration.

R.D. timely appealed from the October 9, 2018 order.

DISCUSSION

I. Applicable Law and Standard of Review

Section 527.6 was enacted " 'to protect the individual's right to pursue safety, happiness and privacy as guaranteed by the California Constitution.' [Citations.] It does so by providing expedited injunctive relief to victims of harassment. [Citation.]" (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412 (*Brekke*).) "A person who has suffered harassment . . . may seek a temporary restraining order and an order after hearing prohibiting harassment." (§ 527.6, subd. (a)(1).) " 'Harassment' " is defined, in pertinent part, as "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner." (§ 527.6, subd. (b)(3).) " 'Course of conduct' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of 'course of conduct.' " (§ 527.6, subd. (b)(1).) The trial court may issue an injunction on "clear and convincing evidence that unlawful harassment exists[.]" (§ 527.6, subd. (i).) However, the court need not make express findings, but rather, "the granting of the injunction itself necessarily implies that the trial court found that [the respondent] knowingly and willfully engaged in a course of conduct that seriously alarmed, annoyed or harassed [the petitioner], and that [the petitioner] actually suffered

substantial emotional distress.'' (*Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1112 (*Ensworth*).)

On appeal from the grant of a section 527.6 civil harassment restraining order, "[w]e review issuance of [the] protective order for abuse of discretion, and the factual findings necessary to support the protective order are reviewed for substantial evidence. [Citations.] 'We resolve all conflicts in the evidence in favor of respondent, the prevailing party, and indulge all legitimate and reasonable inferences in favor of upholding the trial court's findings. [Citations.]' " (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1226; see *Ensworth*, *supra*, 224 Cal.App.3d at p. 1111, fn. 2 ["[w]here the trial court had determined that a party has met the 'clear and convincing' burden, that heavy evidentiary standard then disappears;" " '[o]n appeal, the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding appellant's evidence, however strong' "] [3]). However, "whether the facts, when construed most favorably in [A.R.'s] favor, are legally sufficient to constitute civil harassment under section 527.6, and whether the restraining order passes constitutional muster, are questions of law subject to de novo review. [Citations.]" (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.)

II. Analysis

R.D. argues that the restraining order violates his rights to constitutionally protected free speech, freedom of religion, freedom of association, and privacy. According to R.D., his text messages and conduct at A.R.'s house were not harassment, but constitutionally protected conduct because he wanted to talk privately with A.R. and to attend a meeting of a religious nature at her home.

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[3] We note that currently pending before our Supreme Court is a case in which the issue to be resolved is: "On appellate review in a conservatorship proceeding of a trial court order that must be based on clear and convincing evidence, is the reviewing court simply required to find substantial evidence to support the trial court's order or must it find substantial evidence from which the trial court could have made the necessary findings based on clear and convincing evidence?" (See *Conservatorship of O.B.* (2019) 32 Cal.App.5th 626, 633–634, review granted May 1, 2019, S254938; Supreme Court denied request to depublish appellate court decision.)

However, at issue here are the constitutional rights of A.R. and her daughter to "pursue safety, happiness and privacy." (See *Russell v. Douvan* (2003) 112 Cal.App.4th 399, 403 ["Section 527.6 is intended 'to protect the individual's right to pursue safety, happiness and privacy as guaranteed by the California Constitution' "].) The effect of the restraining order here is "to protect every legitimate right of" A.R. and her daughter, and "at the same time prevent unlawful interference" with R.D.'s rights. (See *Magill Bros. v. Bldg. Service etc. Union* (1942) 20 Cal.2d 506, 511–512; see *Wilson v. Superior Court* (1975) 13 Cal.3d 652, 662 ["[a]n injunction restraining speech may issue . . . to protect private rights"]; *People v. Hernandez* (1991) 231 Cal.App.3d 1376, 1381 [former Penal Code section 653m prohibiting annoying telephone calls does not violate caller's First Amendment rights].)

R.D.'s claims of constitutional rights to contact by telephone, text message, and to appear uninvited at the home of A.R. to purportedly discuss religious matters do not prevail over A.R.'s constitutional rights to privacy and to determine with whom she and her daughter will associate. Concededly, statutes that purportedly " 'restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society.' [Citation.] The 'protection of innocent individuals from . . . annoyance at the hands of persons who employ the telephone, not to communicate, but for other unjustifiable motives,' is such a compelling interest. [Citation.]" (*People v. Hernandez*, *supra*, 231 Cal.App.3d at p. 1381.) R.D. has not demonstrated he has a First Amendment right to send A.R. text messages that are annoying or harassing despite their purported religious content or that he has a right to come to her home to discuss religious matters despite her specific and repeated requests that he not come to her home.

We also see no merit to R.D.'s claim that the restraining order for harassment cannot stand because he had legitimate purposes in telephoning, sending text messages, and appearing at A.R.'s home. The trial court was entitled to find that, once A.R. had informed R.D. that she did not want him to contact her or come to her home, his

continued attempts to contact A.R. had no legitimate purpose. Moreover, "[i]t is readily apparent from the tone and content" of R.D.'s text messages that he "had no intention of ceasing" to contact A.R. unless enjoined by the court. "Thus, we have no trouble concluding that all of his actions constituted a course of conduct, i.e., 'a series of acts over a period of time, however short, evidencing a continuity of purpose [as required under section 527.6, subdivision (b)(3).]' " (*Brekke*, *supra*, 125 Cal.App.4th at pp. 1413–1414.) By his appellate contention, R.D. attempts "to reargue . . . those factual issues decided adversely to" him, which is "contrary to established precepts of appellate review." (*Hasson v. Ford Motor Co*. (1982) 32 Cal.3d 388, 398–399.)

Because R.D.'s claims of error fail, we uphold the section 527.6 restraining order issued on October 9, 2018.

DISPOSITION

The order, dated October 9, 2018, is affirmed. Appellant R.D. shall bear his own costs on appeal.

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Petrou, J.

WE CONCUR:

_____
Fujisaki, Acting P.J.

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Wiseman, J.[*]

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[*] Retired Associate Judge of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.